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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/627,094	07/25/2003	Jeffrey G. Freeman	33951.3	2248

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HAYNES AND BOONE, LLP  
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DALLAS, TX 75202

EXAMINER

VASUDEVA, AJAY

ART UNIT PAPER NUMBER

3617

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/627,094	<b>Applicant(s)</b> FREEMAN ET AL.	
	<b>Examiner</b> Ajay Vasudeva	<b>Art Unit</b> 3617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 31 March 2005.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 4,8,11,12 and 14-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4,8,11,12 and 14-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 25 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)                                    | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *New Rejection*

1. Upon a reconsideration of the previously allowed claim(s) in view of newly discovered art US 3,449,778 A (JONES), an English translation of the Japanese prior art, and/or a broader interpretation of the claims, the previously indicated allowability is being withdrawn.

This Office Action is a non-final rejection. The examiner regrets the resulting inconvenience to the applicant.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 15-17 are rejected under 35 U.S.C. 102(b) as being anticipated by JP 2001-233289 A ('289).

JP ('289) shows a flotation device for supporting a user in the water (figures 1 and 2), having a pair of buoyant front panels [11] with a closure connecting the front panels. A pair of side connecting panels, comprising grommets and tie cords [17], extends from the front panels for disposition beneath the arms of the user. A buoyant back panel [12] is connected to the side connecting panels.

A buoyant head support panel [15] is formed with the air bladder [10] of the flotation device, and is connected to the back panel for supporting the head of a user (see paragraph 23, lines 1-3, of the English translation). Because the flotation device bladder is made of elastic resin sheet (paragraph 25 of the translation), it will show some degree of flexibility along the

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attachment seam line (see figure 5). The head support panel is therefore considered to be hingedly attached to the back panel.

A bottom connecting panel [13] extending from the front panels to the back panel for disposition between the user's legs. The bottom connecting panel is considered buoyant due to buoyancy provided by the bladder.

Re the limitation "clip", such has been broadly interpreted to mean any type of fastener or fastening device. As such, the string holes [13a, 16] on the bottom connecting panel and the front panels, respectively, are considered to be equivalent of clips. Re claim 15, the limitation "for clipping said device to a second flotation device" is merely an intended use and has not been given patentable weight. Applicant may note, however, that the flotation device is considered capable of being attached to another flotation device by passing of a suitable fastener, such as a string, through the clip of the front panel.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4, 8, 11, 12, 14-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jones (US 3,449,778 A) in view of Campbell (US 5,766,114 A), and further in view of Fister (US 5,152,706 A).

Jones ('778) shows a flotation device made of foam (fig. 4) for supporting a user in the water, having a pair of buoyant front panels [2, 4] with a closure connecting the front panels. A pair of side connecting panels [8] extends from the front panels for disposition beneath the arms

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of the user. A buoyant back panel [6] is connected to the side connecting panels. A pair of shoulder straps [32] extends from the front panels. A connecting strap [36, 37] is connected to the shoulder straps and the back panel, wherein the components identified by numerals 36 and 37 together constitute the connecting strap (see figures 1 and 3). A clip [10] is provided on one of the front panels and the back panel. Re the limitation "clip", such has been broadly interpreted to mean a device that can be used as a fastener. The limitation "for clipping said device to a second flotation device" is merely an intended use and has not been given patentable weight. Applicant may note, however, that the flotation device is considered capable of being attached to another flotation device by use of a suitable fastener. Re claim 14, the strap [30] is considered as capable of connecting the flotation device to another flotation device.

Jones ('778), however, is silent on the provision of a buoyant head support panel or a bottom connecting panel.

Campbell shows a buoyant head support panel [16] made of Insolite™, which is the trade name of a foam material. The head support panel is hingedly attached to a belt [13c] of a flotation device for supporting the head of a user (col. 4, lines 64-65).

It would have been obvious for one skilled in the art at the time of the invention to attach a head support panel to the connecting strap of Jones ('778), as taught by Campbell. Providing such a support would have adapted the flotation device for use by toddlers, thereby allowing them to safely participate in aquatic activities. It may be noted that although the head support panel is not directly attached to the back panel, it is considered to be at least indirectly connected to such panel through the connecting strap.

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Jones ('778), as modified above by Campbell, is also silent on the provision of a bottom connecting panel.

Fister shows a flotation device for a physically disabled person, having a buoyant bottom connecting panel [12] made of foam (col. 3, line 9) that extends from front panels to a back panel for disposition between the user's legs. Straps are provided for connecting the bottom panel to the front panels, and are considered to be equivalent of the torso clips recited in the claims.

It would have been obvious for skilled in the art at the time of the invention to provide a buoyant bottom connecting panel in the flotation device of modified Jones, as taught by Fister. Providing such a bottom connecting panel would have adapted the flotation device for use by children who were physically handicapped, thereby allowing them to safely partake in aquatic activities.

Note: Claims 8 and 14 will be favorably considered for allowance if the limitation "head support panel hingedly connected to said back panel" is amended to be more specific with regard to its attachment on the back panel, such as by changing the limitation "connected to" to – **affixed to –**, or to – **attached directly to –**.

### ***Response to Arguments***

6. No arguments against the rejections were presented.

**Conclusion**

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure: The art cited in the attached PTO form 892 shows a variety of personal flotation devices.

8. This is a Non-Final rejection.


9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ajay Vasudeva whose telephone number is (571) 272-6689. The examiner can normally be reached on Monday-Friday 12:00 -- 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, S. Joe Morano can be reached on (571) 272-6684. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ajay Vasudeva  
Examiner  
Art Unit 3617

AV

  
AJAY VASUDEVA  
PATENT EXAMINER 6/9/05